

§ 295.21

of such fiscal year, then MSP Operating Agreements for which funds are not available shall be terminated using the pro rata distribution method used to award MSP Operating Agreements set forth in § 295.12(d). With respect to each terminated agreement the Contractor shall be released from any further obligation under the agreement, and the Contractor may transfer and register the applicable vessel under a foreign registry deemed acceptable by MARAD. In the event that no funds are appropriated, then all MSP Operating Agreements shall be terminated and each Contractor shall be released from its obligations under the agreement. Final payments under the terminated agreements shall be made in accordance with § 295.30. To the extent that funds are appropriated in a subsequent fiscal year, existing operating agreements may be renewed if mutually acceptable to the Administrator and the Contractor and the MSP vessel remains eligible.

(g) *Operation under a Continuing Resolution.* In the event a Continuing Resolution (CR) is in place that does not provide sufficient appropriations to fully meet obligations under MSP Operating Agreements, a Contractor may request termination of the agreement in accordance with paragraph (f), herein, and § 295.30.

(h) *Requisition authority.* To the extent section 902 of the act is applicable to any vessel transferred foreign under this section, the vessel shall remain available to be requisitioned by the Maritime Administration under that provision of law.

(i) *Transfer of Operating Agreements.* A Contractor subject to an Agreement may transfer that Agreement (including all rights and obligations thereunder) to any person eligible to enter into an Agreement under the same priority established in section 652(i)(1)(A) of the act as the Contractor, provided that:

(1) The Contractor gives notice of any such transfer to the Maritime Administrator by filing a completed application;

(2) The transfer is not disapproved in writing by the Maritime Administrator within 90 days of the notification; and

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(3) the vessel to be covered by the Agreement after transfer is the same vessel originally covered by the Agreement or is an eligible vessel under section 651(b) of the act and is the same type, and comparable to, the vessel originally covered by the Agreement.

§ 295.21 MSP assistance conditions.

(a) *Term of MSP Operating Agreement.* MSP Operating Agreements shall be effective for a period of not more than one fiscal year, and unless otherwise specified in the Agreement, shall be renewable, subject to the availability of appropriations or amounts otherwise made available, for each subsequent fiscal year through the end of FY 2005. In the event appropriations are enacted after October 1 with respect to any subsequent fiscal year, October 1 shall be considered the effective date of the renewed agreement, provided sufficient funds are made available and subject to the Contractor's rights for early termination pursuant to section 652(m) of the act.

(b) *Terms under a Continuing Resolution (CR).* In the event funds are available under a CR, the terms and conditions of the MSP Operating Agreements shall be in force provided sufficient funds are available to fully meet obligations under MSP Operating Agreements, and only for the period stipulated in the applicable CR. If funds are not appropriated at sufficient levels for any portion of a fiscal year, the terms and conditions of any applicable MSP Operating Agreement may be voided and the Contractor may request termination of the MSP Operating Agreement in accordance with § 295.20(f).

(c) *National security requirements.* Each MSP Operating Agreement shall require the owner or operator of an Eligible Vessel included in that agreement to enter into an Emergency Preparedness Program Agreement pursuant to section 653 of the act.

(d) *Vessel operating requirements.* The MSP Operating Agreement shall require that during the period an Eligible Vessel is included in that Agreement, the Eligible Vessel shall:

(1) *Documentation.* Be documented as a U.S.-flag vessel under 46 U.S.C. chapter 121; and

(2) *Operation.* Be operated exclusively in the U.S.-foreign trade or in mixed foreign and domestic trade allowed under a registry endorsement issued under 46 U.S.C. 12105, and shall not otherwise be operated in the coastwise trade of the United States.

(e) *Limitations.* Limitations on Contractors with respect to the operation of foreign-flag vessels shall be in accordance with section 804 of the act, as amended. The operation of vessels, other than Agreement Vessels, in the noncontiguous trades shall be limited in accordance with service levels and conditions permitted in section 656 of the act.

(f) *Non-Contiguous Domestic Trade.* [Reserved]

(g) *Obligation of the U.S. Government.* The amounts payable as MSP Payments under a MSP Operating Agreement shall constitute a contractual obligation of the United States Government to the extent of available appropriations.

§ 295.22 Commencement and termination of operations.

(a) *Time frames.* A Contractor that has been awarded a MSP Operating Agreement shall commence operations of the Eligible Vessel, under the applicable agreement or a subsequently renewed agreement, within the time frame specified as follows:

(1) *Existing vessel.* Within one year after the initial effective date of the MSP Operating Agreement in the case of a vessel in existence on that date and after notification to MARAD within 30 days of the Contractor's intent; or

(2) *New building.* Within 30 months after the initial effective date of the MSP Operating Agreement in the case of a vessel to be constructed after that date.

(b) *Unused authority.* In the event of a termination of unused authority pursuant to paragraph (a) of this section, such authority shall revert to MARAD.

§ 295.23 Reporting requirements.

The Contractor shall submit to the Director, Office of Financial Approvals, Maritime Administration, 400 Seventh St., SW., Washington, DC 20590, one of the following reports, including man-

agement footnotes where necessary to make a fair financial presentation:

(a) *Form MA-172.* Not later than 120 days after the close of the Contractor's semiannual accounting period, a Form MA-172 on a semiannual basis, in accordance with 46 CFR 232.6; or

(b) *Financial Statement.* Not later than 120 days after the close of the Contractor's annual accounting period, an audited annual financial statement in accordance with 46 CFR 232.6 and the most recent vessel operating cost data submitted as part of its Emergency Preparedness Agreement.

(Approved by the Office of Management and Budget under Control Number 2133-0525.)

Subpart D—Payment and Billing Procedures

§ 295.30 Payment.

(a) *Amount payable.* A MSP Operating Agreement shall provide, subject to the availability of appropriations and to the extent the agreement is in effect, for each Agreement Vessel, an annual payment of \$2,100,000 for each fiscal year. This amount shall be paid in equal monthly installments at the end of each month. The annual amount payable shall not be reduced except as provided in paragraph (b) of this section and § 295.31(a)(3).

(b) *Reductions in amount payable.* (1) The annual amount otherwise payable under a MSP Operating Agreement shall be reduced on a pro rata basis for each day less than 320 in a fiscal year that an Agreement Vessel is not operated exclusively in the U.S.-foreign trade or in mixed foreign and domestic trade allowed under a registry endorsement issued under 46 U.S.C. 12105. Days during which the vessel is drydocked or undergoing survey, inspection, or repair shall be considered to be days during which the vessel is operated, provided the total of such days within a fiscal year does not exceed 30 days, unless prior to the expiration of a vessel's 30 day period, approval is obtained from MARAD for an extension of the 30 day provision.

(2) There shall be no payment for any day that a MSP Agreement Vessel is engaged in transporting more than 7,500 tons (using the U.S. English